*** THE HON'BLE SRI JUSTICE G. BIKSHAPATHY**

AND

THE HONOURABLE SRI JUSTICE P.S. NARAYANA

+ WRIT PETITION No.16151 of 2004

%Dated 23rd day of March, 2005

1. C.V. Raghavaiah, s/o C.S.G.K.Murthy,
R/o Nalgonda Cross Road, Malakpet, Hyderabad.
2. M.V. Rama Rao, s/o M.L.Narasimha Rao,
R/o 9-126, Lalitha Nagar, Dilsukhnagar, Hyderabad-500 060.
3. V. Subba Rao, s/o Venkat Subbaiah,
R/o 6-3-596/63/9, Anugraha Apts., Flat No.8, Erramanzil Colony,
Hyderabad-500 082.
4. R.V.K. Ramakrishna Sarma, s/o R.Muralidhar,
R/o 2-22-175, Jayanagar Colony, Opp:KPHB Colony, Kukatpally,
Hyderabad-500 072.

…. PETITIONERS

VERSUS

$ 1. State of Andhra Pradesh represented by its Principal Secretary to

Government, Finance Department, Secretariat, Hyderabad.
2. State of Andhra Pradesh represented by its Principal Secretary to Government,
Energy Department, Secretariat, Hyderabad.
3. The Registrar, Special Court under Indian Electricity
(A.P. Amendment) Act, 2000, A.P.Housing Board Buildings,

M.J. Road, Hyderabad.
4. The Accountant General, Andhra Pradesh, Hyderabad.

.....RESPONDENTS

@ Counsel for Revision Petitioner: D.V. Sitarama Murty

^ Counsel for Respondent No.2: G.P. for Energy

< GIST:

> HEAD NOTE:

? Cases referred:

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The Court made the following:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY THIRD DAY OF MARCH,

TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 16151 of 2004

Between:

1. C.V. Raghavaiah, s/o C.S.G.K.Murthy,
   R/o Nalgonda Cross Road, Malakpet, Hyderabad.
2. M.V. Rama Rao, s/o M.L.Narasimha Rao,
   R/o 9-126, Lalitha Nagar, Dilsukhnagar, Hyderabad-500 060.
3. V. Subba Rao, s/o Venkat Subbaiah,
   R/o 6-3-596/63/9, Anugraha Apts., Flat No.8, Erramanzil Colony,
   Hyderabad-500 082.
4. R.V.K. Ramakrishna Sarma, s/o R.Muralidhar,
   R/o 2-22-175, Jayanagar Colony, Opp:KPHB Colony, Kukatpally,
   Hyderabad-500 072.

..... PETITIONERS

AND

1. State of Andhra Pradesh represented by its Principal Secretary to

Government, Finance Department, Secretariat, Hyderabad.
2. State of Andhra Pradesh represented by its Principal Secretary to Government,
   Energy Department, Secretariat, Hyderabad.
3. The Registrar, Special Court under Indian Electricity
   (A.P. Amendment) Act, 2000, A.P.Housing Board Buildings,

M.J. Road, Hyderabad.
4. The Accountant General, Andhra Pradesh, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ or order or direction more particularly one in the nature of *Writ of Mandamus* to declare the action of the respondents in:- a) not fixing the pension of petitioners at Rs.1450/- per annum and not revising and granting the enhanced pension to the petitioners @ Rs.4716/- P.A. after amending Rule 8(2) of Condition of Service Rules for Chairman and Members as per pension being paid to Members of APAT and consequently to effect payment of pension accordingly; b) it is further prayed that petitioners be paid Dearness Relief attached to the pension as revised from time to time after declaring that the petitioners are entitled to be paid dearness relief as revised from time to time; c) it is further prayed that petitioners be paid HRA @ 30% of pay similar to what is being paid to members of APAT for the tenure of service with the Special Court after declaring proceedings of the 2nd respondent in Lr.No.3708/PR.II/2002-6 DATED 11-11-2003 negativing the proposal for enhancement of HRA to 30% as arbitrary and illegal; d) it is further prayed that the petitioners be paid the arrears of Pension, Dearness Relief and HRA along with interest at 18% per annum from the date of eligibility.

Counsel for the Petitioners: MR.D.V.SITARAMAMURTHY
Counsel for the Respondents NO.2: GP FOR ENERGY
Counsel for Respondents No.1, 3 & 4: G.P. fir Finance & Planning

The Court made the following:

ORDER: (Per Hon'ble Sri Justice P.S. Narayana)

The petitioners 1 and 2 joined as Judicial Members on 24.10.2000 and 03.11.2000 respectively. Prior to joining the Special Court, they had retired as District Judges on 30.09.2000 and 30.06.1999 respectively. Petitioners 3 and 4 joined as Technical Members on 19.10.2000 and 01.11.2000 respectively. Prior to joining, they had worked as Chief Engineers in A.P. Transco and retired with effect from 30.06.1999 and 31.10.2000 respectively.

2. The writ petition is filed for a Writ of Mandamus or any other appropriate order or direction to declare the action of the respondents in not fixing the pension of petitioners at Rs.1450/- per annum and not revising and granting the enhanced pension to the petitioners @ Rs.4716/- P.A. after amending Rule 8(2) of Condition of Service Rules for Chairman and Members as per pension being paid to Members of A.P. Administrative Tribunal (hereinafter referred to as APAT) and consequently to effect payment of pension accordingly and the petitioners be paid Dearness Relief attached to the pension as revised from time to time after declaring that the Petitioners are entitled to be paid dearness relief as revised from time to time and further prayed that the petitioners be paid HRA @ 30% of pay similar to what is being paid to members of APAT for the tenure of service with the Special Court after declaring proceedings of the 2nd respondent in Lr.No.3708/PR.II/2002/6, dated 11.11.2003 negativing the proposal for enhancement of HRA to 30% as arbitrary and illegal and the petitionersss be paid arrears of Pension, Dearness Relief and HRA along with interest at 18% per annum from the date of eligibility and pass such other suitable orders.

3. Sri D.V. Sitharam Murty, the learned counsel representing the petitioners and

the learned Government Pleader for Energy and learned Government Pleader for Finance and Planning made certain submissions supporting their respective contentions. The Special Court under Indian Electricity A.P. Amending Act, 2000 under Section 49-D(i) of Indian Electricity Act, 1910, was provided for speedy enquiry into alleged offences under Section 39 to 49 of the aforesaid Act, vide G.O.Ms.No.98 Energy (PR.II) Department, dated 17.10.2000. Pursuant thereto, the Government vide G.O.Ms.No.99 Energy (PR.II) Department, dated 17.10.2000 appointed the petitioners as Members of the said Special Court for a period of 3 years from the date of assumption of office. The Special Court consists of a Chairman, two Judicial Members and two Technical Members and they were appointed for a period of three years. The Rules to regulate the conditions of services of Chairman and Members of the Special Court were issued in G.O.Ms.No.30 Energy (PR.II) Department dated 29.03.2001. Rule 3 prescribes the entitlement of pay of the Chairman and the Members and the Chairman is entitled to draw pay on par with Judges of the High Court and a Member in the scale of Rs.22,400 to 26,000 per month. As per Rule 4, the Chairman is entitled to receive Dearness Allowance and CCA appropriate to their pay at the rates admissible to a Judge of High Court and the Members was entitled to Dearness Allowance and City Compensatory Allowance on par with Group-A officers of Central Government drawing a pay in the scale of Rs.22400-600-26000 or above.

4. Rule 8 deals with pension entitlement of Chairman and Members of Special Court and it prescribes that Chairman or Member shall not be entitled for pension if he has put in less than two years of service with the Special Court and it is further provided that pension shall be on par with rates applicable to the members of A.P.A.T. The rule specifically provides that pension as provided under this rule would be in addition to the pension for the service rendered before the joined the Special Court. The said rule is extracted hereunder:-

> "8. PENSION:
>
> Every person appointed to the Special Court as the Chairman or a Member shall be entitled to pension, provided that no such pension shall be payable,-

if he has put in less than two years of service with the Special Court. Pension in case of Members shall be calculated @ Rs.1450/- per annum for each completed year of service on par with the rates applicable to the Members of Andhra Pradesh Administrative Tribunal. In the case of the Chairman the extra pension payable to him for the service rendered in the Special Court shall be calculated as if he has worked as a Judge of the High Court for the same period.

Provided that the aggregate amount of pension payable under this rule together with the amount of pension including commuted portion of pension, if any, drawn or entitled to be drawn while holding office in the Special Court shall not exceed the maximum amount of pension prescribed for a Judge of the High Court.

Provided further that if the Chairman or a Member was a judge of a High Court or was a District Judge or was holding a post under the State Government or the State Electricity Board or its successor entitles immediately before his joining the Special Court, he shall be governed by the rules which were applicable to him immediately before joining the Special Court. The pension referred to in this rule is additional pension apart from the pension to which the Chairman/Members are eligible for the service rendered before they joined the Special Court."

5. It is also submitted that the State Rules are in pari materia with those of A.P. Administrative Tribunal (Salaries and Allowances and Conditions of Services of Chairman, Vice Chairman and Members) Rules, 1988. The State Government by orders issued in G.O.Ms.No.351 Revenue (A&R) Department dated 22.05.1998 amended sub-rule 2 of Rule 8 of A.P. Administrative Tribunal Rules, 1988 thereby enhancing the pension of members of APAT from Rs.700/- to Rs.1450/- for each completed year of service. This was made effective from 13.02.1996. Accordingly, the pension prescribed by G.O.Ms.No.30 Energy (PR.II) Department, dated 29.03.2001 under Rule 8 had provided that pension in case of members shall be calculated @ Rs.1450/- per annum for each completed year of service on par with the rates applicable to the members of A.P. Administrative Tribunal. It is submitted that thereafter the Government of Andhra Pradesh pursuant to notifications under GSR 842 (E) dated 31.10.2000 and GSR 914 (E) dated 12.12.2000 of the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Government

of India, New Delhi issued G.O.Ms.No.52, General Administration (SPF.B) department, dated 31.01.2001 amending sub-rule 2 of Rule 8 of A.P. Administrative Tribunal (Salaries and Allowances and Conditions of Services of Chairman, Vice Chairman and Members) Rules, 1988 enhancing the pension from Rs.1450/- per annum to Rs.4716/- per annum, which was made effective from 1st January, 1996. The same reads as under:-

> "2. In rule 8 of the Andhra Pradesh Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice Chairman and Members) Rules, 1989, in sub-rule (2), for the words "rupees one thousand four hundred and fifty per annum", the words "rupees four thousand seven hundred and sixteen per annum" shall be substituted."

It is submitted that the pension payable to Members of Special Court under Indian Electricity (A.P. Amendment) Act, 2000 as provided under Rule 8 prescribed the pension @ Rs.1450/- per annum for each completed year of service on par with the pension payable to members of Andhra Pradesh Administrative Tribunal. A reading of provision makes it very clear that the pension prescribed was to be on par with that of Members of A.P. Administrative Tribunal. But when the pension payable to members of Administrative Tribunal, was enhanced from Rs.1450/- to Rs.4716/- per annum by G.O.Ms.No.52, dated 31.01.2001 and made applicable w.e.f. 01.01.1996 a similar amendment for payment of enhanced pension to Members of Special Court @ Rs.4716/- was not brought about and the Rule 8 has not been amended accordingly."

6. It is the specific stand taken by the writ petitioners that the pay entitlement of the Chairman and Members of Special Court, Indian Electricity (A.P. Amendment) Act, 2000 is the same as prescribed to Chairman and Members of A.P. Administrative Tribunal etc., and hence, when the pay of Members of Special Court under Indian Electricity Act is on par with the members of APAT, there cannot be discrimination in paying pension equivalent to APAT Members. Further, specific stand taken that pursuant to the provisions of Electricity Act,

2003 which came into effect from 10.01.2003, G.O.Ms.No.118 Energy (Power-II) Department, dated 18.10.2003 was issued whereby under powers conferred by Section 172(d) of the aforesaid Act the Government of Andhra Pradesh declared that Special Court constituted under Section 49(D) as notified in G.O.Ms.No.98 Energy (Power-II) department, dated 17.10.2000 ceases to exist from the date of issue of the said notification. Accordingly, the Special Court has ceased to exist from the date of notification i.e. 18.10.2003. As some of the Members had not completed their term of 3 years by that date and had completed two full years only and were short by 6 days as in the case of 1st petitioner, 15 days in 2nd Petitioner and 13 days with regard to 4th petitioner in completing their 3rd year of service as members of Special Court and they sought clarification as to the date of expiry of their tenure consequent on issue of G.O.Ms.No.118, dated 18.10.2003 the Government by G.O.Ms.No.129, dated 21.11.2003 has clarified that the irrespective of detailed shortfall the tenure shall be treated as completion of 1 year for counting of pension under Rule 8. Accordingly, all the petitioners are entitled for additional pension for the 3 years service as Members of Special Court under Indian Electricity (A.P. Amendment) act on par with Members of APAT. The pension papers in respect of the petitioners was submitted by the 3rd Respondent to the 2nd respondent by Lr.No.Dis.No.357/03, dated 07.10.2003 calculating the pension @ Rs.1450/- per annum for each completed year of service. The pension papers were submitted for favour of sanction of pension and onward transmission to the Accountant General of A.P., Hyderabad. It is submitted that the petitioners entitled for additional pension @ Rs.4716/- per annum for each completed year of service in Special Court similar to what is being paid to retired members of APAT. It is further submitted that Members of Special Court under Land Grabbing (Prohibition) Act who were not granting pension at revised rates of Rs.4716/- per annum as drawn by Members of APAT had filed W.P.No.191 of 2000 and a Division Bench of Honourable Court had allowed the Writ Petition and held that the petitioners therein were entitled for pension on par with Members of Administrative Tribunal as notified by Government of India in Notification dated 31.10.2000 and republished by Government of A.P. in G.O.Ms.No.52, dated 31.01.2001 along with dearness relief as notified by the Government from time to time.

7. Further, it has been stated that as per Rule 12 of Conditions of Service Rules for Chairman and Members of the Special Court under Indian Electricity (A.P. Amendment) Act, 2000 issued in G.O.Ms.No.30 dated 29.03.2001 when the Member of the Special Court is not provided with rent free accommodation of appropriate type, they may be paid an allowance of an amount equal to 20% of his pay or such rates as applicable to officers of corresponding status in Government. The same is extracted hereunder:-

> "12. ACCOMMODATION:
>
> (1)(a) The Chairman shall be entitled for accommodation on par with the serving Judge of High Court of Andhra Pradesh.
>
> (b) A Member of the Special Court shall be entitled to the use of official residence of appropriate type subject to availability on the payment of licence fee at the rates prescribed by Government from time to time.
>
> 2. When the Chairman is not provided with rent free accommodation he will be eligible for Rs.15,000/- HRA or a Member is not provided with or does not avail himself of the official residence referred to in sub-rule(1), he may be paid an allowance of an amount equal to twenty per cent of his pay or such rates as are applicable to the High Court Judges or officers or the corresponding status in the Government respectively.
>
> 3. Where the Chairman or a member occupies an official residence beyond the permissible period he shall be liable to pay additional licence fee or penal rent, as the case may be, and liable to eviction in accordance with the rules of the Government."

8. It is submitted that the petitioners were initially paid HRA @ 20% of pay for a period of six months. Thereafter, as the HRA paid to Members of APAT was only 15% than the difference of HRA paid to members and the HRA being paid to members of APAT i.e. 20% - 15% amounting to 5% was recovered from the petitioners contrary to the Rules. The petitioners had raised a protest relating to

the recovery, but, however, since the petitioners were in service for a relevant point of time, they could not be questioned the same. But, a detailed representation was made on 15.07.2002 for payment of HRA @ 30% of pay and another representation dated 03.07.2003 also had been made. However, the representation made by the petitioners dated 15.07.2002 was negatived by letter No.3708/PR-II(2)/2002-6, dated 11.11.2003 of Principal Secretary, Energy Department, the second respondent without appreciating the facts in the proper perspective. Despite the same, the Members were being paid 50% towards HRA as Members of APAT were being made at relevant point of time. HRA payable to the Chairman and Members of the APAT had been enhanced from 15% to 30% which had been republished in G.O.Ms.No.99, General Administration Department, (SPE.B) Department, dated 24.04.2002 thereby amending Rule 12(2) of A.P. Administrative Tribunal (Salaries and Allowances and Conditions of Services of Chairman, Vice Chairman and Members) Rules, 1989 and the said amendment came into force from 01.08.1997. Like wise, the same amendment should have been brought about in respect of Rule 12 (2) of Rules prescribed in G.O.Ms.No.30, dated 29.03.2001 as has been done in case of Members of A.P. Administrative Tribunal and hence, it would amounts to an arbitrary action.

9 . It is also further stated that the petitioners made a representation on 15.07.2002 to the Chairman and the same was forwarded to the 2nd respondent on 16.07.2002 and the 2nd respondent without properly appreciating the same, negatived the proposal on the ground that the terms and conditions do not provide for HRA to Chairman and Members of Special Court under Indian Electricity Act at the rates applicable to the Members and Chairman of APAT. This Court in W.P.No.191 of 2003 dated 06.11.2003, T. Chandrasekhar Reddy and others Vs State of A.P., it is held that the members of the Tribunals having been treated equally in matters of service conditions cannot be discriminated converting the equals into unequals and hence, the petitioners are also entitled for HRA @ 30% from their date of joining which is subsequent to the date of enhancement of HRA to Members of APAT i.e. 01.08.1987. In taken up writ petition No.3281 of 2002, where the relief of writ of Certiorari was prayed for calling for records from the Government in the Finance Department relating to

the amendment of Rule 3 of A.P. Land Grabbing (Prohibition) Special Court Chairman and Members (Conditions of Service Rules) 1996 and quashing G.O.Ms.No.629, Revenue (A&R) Department, dated 12.08.1999 as arbitrary and illegal and for other suitable reliefs, it was observed as follows:

> "The Registrar of the Special Court, therefore, states that there is disparity in the scales of pay of the Members of the Special Court compared to scales of pay of the Members of the Andhra Pradesh Administrative Tribunal and of the Special Court under the Indian Electricity (Andhra Pradesh Amendment) Act, 2000. Therefore, the Registrar of the Special Court states that the impugned Government Order is discriminatory and suffers from the vice of Article 14 of the Constitution of India.
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> It is stated by the Registrar of the Special Court that in spite of repeated requests by way of letters including the letters dated 4.9.1998 addressed by the Chairman of the Special Court the Government of Andhra Pradesh in the Finance Department negatived the proposal of the Special Court for sanction of scale of pay of Rs.22,400-600-26,000 per mensem to the Members of the Special Court. It appears that the Government of Andhra Pradesh is of the opinion that the scale of pay of the Additional Secretary to the Government of India cannot be given to the Members of the Special Court.
>
> It is stated that since the Special Court is not having funds to engage an advocate and to file writ petition in this Court questioning the action of the Government of Andhra Pradesh in the Finance Department in not accepting the proposal of the Special Court to give scale of pay of Rs.22,400-600-26,000 per mensem to its Members, the present representation has been made praying that the same may be taken up as a writ petition by this Court. When the representation was received by this Court, this Court directed the Registry of this Court to treat the same as a writ petition and on 20.2.2002 ordered notice to the respondent Nos.1 to 4 herein. Pursuant to the above notice, the Government of Andhra Pradesh now issued an amendment to Rule 3 of the Rules with effect from 13.2.1996 in G.O.Ms.No.207 Revenue (A&R) Department, dated 20.4.2002 in exercise of the powers conferred by sub-section (1) of Section 16 of the Act. By the said notification the following is substituted as Rule 3 of the Rules:
>
> PAY: The Chairman shall receive a pay of Rs.26,000/- plus Special Pay of Rs.1,000/- per mensem and a Member shall receive pay in the scale of pay of Rs.22,400-600-26,000 or such scales of pay as are applicable to the Chairman and Members of the Andhra Pradesh Administrative Tribunal as amended from time to time.
>
> Provided that in the case of an appointment as Chairman or as the case may be a Member of a person who has retired as a Judge of a High Court or who

has retired from service under the Central Government or a State Government and who is in receipt of or has received or has become entitled to receive any retirement benefits by way of pension and/or gratuity, or other forms of retirement benefits, the aforementioned pay shall be reduced by the gross amount of pension and pension equivalent of gratuity or any other form of retirement benefits, if any, drawn or to be drawn by him.

The above Government Order was issued by order and in the name of the Governor of Andhra Pradesh and copies of the same are marked to the Chairman and the Registrar of the Special Court and others including the Registry of this Court. ”

Having observed so, the Division Bench had ordered the writ petition stating that the Government Order had been issued pursuant to the representation dated 13.03.2002 and in view of the same a direction was issued to the Government of Andhra Pradesh to give effect to G.O.Ms.No.207 Revenue (A&R) Department, dated 20.04.2004 forthwith.

10. The state Government is required to revise and fix the pension of the petitioners at Rs.4716/- per annum who are members of Special Court on par with members of APAT. The quantum of Pension is a certain percentage correlated to the average emoluments. When the pay of members of Special Court under Indian Electricity Act and members of APAT is same, the same treatment may be given to the petitioners also. The petitioners also had referred to several representations, which had been made in this regard. It is stated that the petitioners had been unsuccessful in getting suitable reliefs despite repeated representations. The petitioners are entitled to Dearness reliefs as revised from time to time on the pension to be fixed. It is also stated that Sri Kona Mohan Rao, retired member of APAT questioned the same in W.P.No.21930 of 1998 seeking directions to the respondents therein to pay him dearness relief on the pension sanctioned for service rendered as judicial member of the APAT and the said writ petition was allowed by this Court and the relevant portion of the judgment is extracted hereunder.

“It is to be seen that no provision is made with regard to dearness relief in the rules. But it is an accepted proposition that when the dearness relief is released by the Central Government or State Government from time to time

they are being automatically made applicable to the pensioners in relation to the amount of pension drawn by them. Similar situation arose in respect of the Chairman of the A.P. Administrative Tribunal in Writ Petition No.6180 of 1997 filed by Justice Upendralal Waghray. In that case also the writ petition was allowed and the authorities were directed to release the dearness relief as and when enhanced. There is no acceptable reason in refusing to release the dearness relief to the petitioners in this case. Admittedly, the Petitioners is being paid two pensions and the dearness relief is to be released to the petitioners in proportion to the pension drawn by him. It is immaterial whether the relief is from central source or from State source. No statutory support is laid for denial of dearness relief. The dearness relief is an essential ingredient of the pension and the source of payment is irrelevant. Obviously the authorities have completed lost rack of the situation and tried to deny the same to the petitioners on wholly unreasonable grounds. Simply because there was no rule covering the payment of dearness relief, that cannot be made ground to deny on the second pension. Obviously the same relief was paid to the first pension and there is no reason why the relief should not be paid to the second pension. Therefore, the source of payment is only an irrelevant consideration for release of dearness relief. Further, it is to be noted that the Administrative members who are drawn from I.A.S. cadres after their retirement from Government service they are also drawing the dearness relief on the second pension and in such an event Rule 16 of the rules framed in G.O.Ms.No.676 General Administration Department, dated 27.11.1989 would come to the aid of the petitioners which reads thus:

"Residuary provision: The conditions of service of the Chairman, Vice-Chairman or a Member for which no specific and express provision is available in these rules, shall be determined by the rules and orders for the time being applicable to officers of corresponding pay levels belonging to Indian Administrative Service.

Under these circumstances, I am satisfied that the action of the Respondents in refusing to release the dearness relief is wholly unjust and contrary to the procedure followed by the Government."

11. It is stated that the State Government had implemented the said judgment in G.O.Tr.No.3853 General Administration (SPF-B) Department, dated 11.10.2000.

12. In the light of the above facts and circumstances, the reliefs had been prayed for.

13. There is no dispute that the pay as applicable to the Chairman and the Members of the A.P. Administrative Tribunal are made applicable mutates mutandis to the petitioners as well. On a careful scrutiny, it is clear that the Rules also were framed on similar lines in a case of T. Chandrasekhar Reddy and others Vs State of A.P. and others in W.P.No.191 of 2003 by a Division Bench of this court in which His Lordship Justice G. Bikshapathy has followed while considering the question as to whether the Members of the Special Court under the A.P. Land Grabbing Prohibition Act are entitled to pension on par with the members of APAT as revised in notification dated 31.10.2000. The Division Bench of this Court has observed, thus:

> "There is no dispute that the pay as applicable to the Chairman and the Members of the Andhra Pradesh Administrative Tribunal are made applicable mutates mutandis to the Chairman and the Members of the Special Court and the Rules are identical except in case of Andhra Pradesh Administrative Tribunal the Central Government is the appropriate authority while in case of Special Court, the State Government is the appropriate authority. Even the said rules are identically framed in respect of the Members of the Special Court constituted by the Government of Andhra Pradesh under Indian Electricity Act under the provisions of the Indian Electricity Act (Amendment Act) 2000 (A.P. Act 2 of 2000). The pay and other benefits are on par with that of the Chairman and the Members of the Andhra Pradesh Administrative Tribunal. Though the rule (3) and (8) cover the Pay and Pension respectively of the Chairman and Members of Special Court, we are only concerned in this Writ Petition the pension of the Members of the Special Court. Therefore, when the pay has been increased and revised scales are made applicable, the pension also is liable to be increased. The Chairman and Members of Andhra Pradesh Administrative Tribunal in matter of pay and other benefits. This is manifest from Rule 3 also. In such a situation, they cannot be meted out with unequal treatment in matter of pension attracting the wrath of Article 14 of the Constitution of India. The pension follows pay and it is always correlated to pay. The pension is now no more a bounty or gratuitous pay, and it is a statutory right of the employee to claim pension in accordance with rules. Therefore, when the minimum pension was increased to Rs.1450/-per annum to Rs.4716/- per annum in respect of the Member of the Andhra Pradesh Administrative Triobunal, after the enhancement of the pay scales of Rs.22,400-26,000 and when the same pay scales were made applicable to the members of the Special Court, there is no reason why the pension as fixed to Members of Andhra Pradesh Administrative Tribunal should not be made applicable in respect of the members of the Special Court. There is no discernible criteria for discriminating the Members of the Special Court while

the Members of Andhra Pradesh Administrative Tribunal who is drawing the pay scale of Rs.22,000-600-26,000 is allowed to draw minimum pension of Rs.4716/-. Therefore, it is but necessary that the same pension should be allowed to be drawn by the Member of a Special Court who is drawing same pay scale referred to above. The members of these Tribunals having been treated equally in matters of service conditions cannot be discriminated converting the equals into unequals. The government while enhancing the pay scales of Members of Special Court ought to have simultaneously amended the provision relating to pension. Obviously there appears to be an omission in this regard. But that should not result in arbitrary and discriminatory treatment to the Members who are treated on par with the Members of the Andhra Pradesh Administrative Tribunal for all purposes."

14. In fact, the Division Bench of this Court had referred to the orders made in W.P.No.21930 of 1998 which was allowed on 05.07.2000 and the learned Judge one of us Justice G. Bikshapathy held:

"It is to be seen that no provision is made with regard to the dearness relief in the rules. But, it is an accepted proposition that when the dearness relief is released by the Central Government or State Government from time to time they are being automatically made applicable to the pensioners in relation to the amount of pension drawn by them. Similar situation arose in respect of the Chairman of the A.P. Administrative Tribunal in W.P.No.6180 of 1997 filed by Justice Upendralal Waghray. In that case also the writ petition was allowed and the authorities were directed to release the dearness relief as and when enhanced. There is no acceptable reason in refusing to release the dearness relief to the petitioners in this case. Admittedly, the petitioner is being paid two pensions and the dearness relief is to be released to the petitioners in proposition to the pension drawn by him. It is immaterial whether the relief is from Central source or from State source. No statutory support is laid for denial of dearness relief. The dearness relief is an essential ingredient of the pension and the source of payment is irrelevant. Obviously, the authorities have completely lost track of the situation and tries to deny the same to the petitioner on wholly unreasonable grounds. Simply because there was no rule covering the payment of dearness relief, that cannot be made ground to deny on the second pension. Obviously, the same relief was paid to the first pension and there is no reason why the relief should not be paid to the second pension. Therefore, the source of payment is only an irrelevant consideration for release of dearness relief. Further, it is to be noted that the administrative members who are drawn from I.A.S. cadres after their retirement from Government service they are also drawing the dearness relief on the second pension and in such an event Rule 16 of the Rules framed in G.O.Ms.No.676, General Administration Department dated 27.11.1989, would come to the aid of the petitioner which reads thus:

> "Residuary provision: The conditions of service of the Chairman, Vice-Chairman or a Member for which no specific and express provision is available in these rules, shall be determined by the rules and Orders for the time being applicable to Officers of corresponding pay levels belonging to Indian Administrative Service."

> Under these circumstances, I am satisfied that the action of the respondents in refusing to release the dearness relief is wholly unjust and contrary to the procedure followed by the Government."

15. On a careful reading of the earlier orders made by this Court relating to similarly placed members of the Special Court under the Land Grabbing Act and also on careful scrutiny of the Rules governing the Members of the A.P. Administrative Tribunal, this court is of the considered opinion that the petitioners are entitled to the reliefs as prayed for, otherwise, the same would result in discrimination, and it would be unjust and unreasonable in the facts and circumstances of the case. It is also made clear that the action of the respondents in not extending the same benefits to the petitioners, though the Members who are similarly placed in A.P. Administrative Tribunal are enjoying the same, is arbitrary and would definitely be unreasonable and unjust.

16. In the light of the foregoing discussion, the petitioners are entitled to the reliefs as prayed for on par with the Members of the A.P. Administrative Tribunal and that of the Members of the Special Courts under the Land Grabbing Act. The controversy is in relation to extending the similar benefits to the petitioners, which are being enjoyed by similarly placed members as referred to supra. As far as the prayer of the petitioners seeking to pay the arrears of Pension, Dearness Relief and HRA along with interest at 18% p.a. from the date of eligibility is concerned, is hereby negatived, and all the other reliefs which had been prayed for and specified in a, b, & c in the petition, no doubt, are hereby granted.

17. Accordingly, the writ petition is allowed to the extent indicated above. No order as to costs.

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(G. BIKSHAPATHY, J)

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(P.S. NARAYANA, J)

Date: 23-03-2005

Note: L.R. Copy to be marked.

Ksn

This Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the day of March, Two thousand and five.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

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(for his lordships kind perusal)

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(for his lordships kind perusal)

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2. The Principal Secretary to Government,

Government of Andhra Pradesh, Energy Department,

Secretariat, Hyderabad.
3. The Registrar, Special Court under Indian Electricity
(A.P. Amendment) Act, 2000, A.P. Housing Board Buildings,

M.J. Road, Hyderabad.
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